

## MINUTES

### **PUBLIC WORKS / PARKS & RECREATION COMMITTEE**

June 29, 2016

A meeting of the Public Works / Parks & Recreation Committee of the County of Kaua'i, State of Hawai'i, was called to order by Ross Kagawa, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, June 29, 2016, at 8:47 a.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock  
Honorable Arryl Kaneshiro  
Honorable JoAnn A. Yukimura  
Honorable Ross Kagawa  
Honorable Mel Rapozo, Ex-Officio Member

Excused:     Honorable KipuKai Kuali'i  
                 Honorable Gary L. Hooser, Ex-Officio Member

There being no objections, the Committee recessed at 8:48 a.m., to convene in the Public Safety Committee Meeting.

The meeting was called back to order at 11:09 a.m., and proceeded as follows:

PWPR 2016-07     Communication (06/09/2016) from Committee Chair Kagawa, requesting the presence of the Acting County Engineer, to address landscape maintenance concerns around County facilities. **(This item was Deferred.)**

Committee Chair Kagawa:     I am going to ask for a motion to defer. We have given enough work for the Department of Public Works today; therefore, we will defer this item for two (2) weeks.

Councilmember Chock moved to defer PWPR 2016-07, seconded by Councilmember Kaneshiro, and carried by a vote of 4:0:1 (*Councilmember Kuali'i was excused*).

Bill No. 2628     A BILL FOR AN ORDINANCE TO AMEND CHAPTERS 18, 20, AND 23 OF THE KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REVOCABLE PERMITS IN COUNTY DESIGNATED RIGHTS-OF-WAY **(This item was Deferred to the July 27, 2016 Committee Meeting.)**

Committee Chair Kagawa: I want to recommend that the Committee defer Bill No. 2628. The Administration has informed me that they will be having further meetings with some of the business owners that had some concerns. It is not only the Hanapēpē business owners, but also business owners in Kōloa, as well as Kapaʻa, that want to get more information as to how we are going to be dealing with lunch wagons in the future on County right-of-ways, et cetera. I did want to use this time to have the public speak and get some education on this item and where it stands now, so the public will have some knowledge of what this Bill is trying to accomplish. Councilmember Chock.

Councilmember Chock: I have a process question. I received a request from the Administration for an amendment, but I do not know if you want to just hold that for next time or if you want to entertain the amendment today before the deferral?

Committee Chair Kagawa: We can do it either way. Let me check with the Deputy County Clerk. Okay. Can we have a motion to approve, first?

Councilmember Chock moved for approval of Bill No. 2628, seconded by Councilmember Kaneshiro.

Councilmember Chock moved to amend Bill No. 2628 as circulated, and as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Councilmember Kaneshiro.

Councilmember Chock: Is someone from the Administration here that can speak to it, because I had some questions regarding the amendment, too?

Councilmember Yukimura: Who is proposing it?

Councilmember Chock: I am...

Councilmember Yukimura: Who asked for it?

Councilmember Chock: Is Lee Steinmetz around?

Committee Chair Kagawa: He is not here. If not, we can just table the discussion on the amendment and if there is a feeling by the Administration that they want to withdraw it, we can have them withdraw it at the next Committee Meeting. Do we have discussion on the amendment?

Councilmember Yukimura: Yes.

Committee Chair Kagawa: Go ahead.

Councilmember Yukimura: We need an explanation before we vote.

Committee Chair Kagawa: The amendment looks simple to me.

Councilmember Yukimura: What is the area that is under the jurisdiction of...

Committee Chair Kagawa: ...of the County of Kaua'i.

Councilmember Yukimura: "Except those roadways..."

Committee Chair Kagawa: "Except those roadways under the jurisdiction of the Department of Parks and Recreation pursuant to Chapter 23, Article 3, Kaua'i County Code 1987, as amended."

Councilmember Yukimura: So what are those roadways? Does anybody know?

Councilmember Chock: That was the exact question I had. Like I said, they asked for the amendment, they asked me to introduce it, and so I did.

Councilmember Yukimura: If we are going to defer this matter, let us withdraw this.

Committee Chair Kagawa: Yes, can we have a withdrawal on the amendment? I do not think it is really necessary to have it amended today.

Councilmember Chock: Okay.

Councilmember Chock withdrew the motion to amend Bill No. 2628 as circulated, and as shown in the Floor Amendment which is attached hereto as Attachment 1. Councilmember Kaneshiro withdrew the second.

Committee Chair Kagawa: We are going to table the amendment for now. With that, shall we take public testimony first? We will have public testimony at this time.

DARRELLYNE M. CALDEIRA, Council Services Assistant II: We have one (1) registered speaker, Lonnie Sykos.

Committee Chair Kagawa: The rules are suspended. Lonnie. Does the public prefer a briefing by the Administration first as to what this Bill is about, and what the Bill is trying to accomplish before you testify?

There being no objections, the rules were suspended to take public testimony.

LONNIE SYKOS: Are they prepared to do that now?

Committee Chair Kagawa: Mr. Rezentes, do we have anyone here from the Administration? Oh, they are on their way.

Mr. Sykos: I will make my statements now.

Committee Chair Kagawa: Okay, go ahead.

Mr. Sykos: For the record, Lonnie Sykos. I have read through this Bill that was posted online and it is incredibly, poorly written to me, and I am very grateful that this is being sent back to the Administration for it to be reworked. It is full of ambiguities. It starts out in Section 1, and I did not print the Bill out, so I am working off of my notes, but Section 1 refers to certain circumstances to allow the vending, but it does not provide any definition of what certain circumstances are and so this is entirely capricious, arbitrary, and very likely not legal. I would also like to point out that the way tourism is structured in Hawai'i is anti-local and anti-resident because the resort and tourism industry has a process that they can use public lands, both State and County, to generate revenue from. The way the system is set up, it is quite easy for these larger businesses to engage in their profit making activities, but there is no way for your average person to profit directly from tourism. As an example, I have been a tourist all over the world in my younger days. Hawai'i is about the only tropical place that you do not have local people selling soda, ice water, flower lei, or all types of things on the beaches. I would simply encourage the Council to consider whether or not, in the big picture, we should be opening up access to the tourists for our residents here to profit directly off of tourism versus funneling everything through the tourism industry—as a big picture in this. I am concerned also about the possibility of having unintended consequences of picking winners and losers, because the language is so vague about who is eligible to utilize the County property and the procedure that you have to go through. That is why I think this needs to be taken back and the...can I take my next three (3) minutes now?

Committee Chair Kagawa: I will have Mr. Steinmetz come up, and then I will give you another opportunity to testify.

Mr. Sykos: Okay. Thank you.

Committee Chair Kagawa: The plan is to defer, Mr. Steinmetz, and if you could just briefly tell us why do we need this Bill, what is the intended purpose, where did you get this language, and is it working there? Can you give the Council a brief update, and then the Councilmembers can ask you some questions. This is just to get some education out there to the public because there seems to be some confusion in newspaper articles and E-mails. I have gotten some E-mails that say they are worried

that this Bill may have some very harmful consequences, including putting the County in some liability that can be avoided.

LEE STEINMETZ, Transportation Planner: Thank you, Committee Chair Kagawa. My name is Lee Steinmetz. I am the Transportation Planner with the County. The start of this process of working out this ordinance was based on, what I would call, events that were occurring that had some difficulties. We were looking at a way to try to address that to make it more equitable for everybody across the island. Examples of some of those events were Truck Stop Thursday, which occurs on Rice Street, Hanapēpē Friday Art Night, and First Saturday Art Walk in Kapaʻa Town. Those are events that happen occasionally; it is not someone trying to vend all the time in public rights-of-way. The County and the communities both felt that there is a value to having these types of events, which spur economic development and are fun for both locals and visitors. From the County's perspective, we were looking at how we can support the people who want to organize those events so that they can really control their event and how we can, from the County's perspective, make sure that the event is safe. That was the primary intent. As we looked at the ordinances that we have on the books already, there were a couple of ordinances. One is the Peddlers and Concessionaires permitting process that is used by the Department of Parks & Recreation. We found that there were some confusion about the way it was written that some people interpreted that to also include County rights-of-way, but that was not the intent of that ordinance. We also have the Revocable Permit Ordinance, which was already written and that ordinance seemed to be very relevant for the type of control that we were looking for, and the protections that we were looking for, for both the people participating in those events and for the County. There is also an existing state law that prohibits vending along State rights-of-way, along State roads. Sorry, similar to Mauna Kea earlier, I ran over, so I am a little short of breath as I am speaking. Anyway, the State ordinance prohibits vending when it is unsafe to do so. Another thing that I did want to bring up is that we did have some instances of vendors using the public right-of-way, for example, on Lāwaʻi Road in Poʻipū, to do Snuba and they were actually staging on the public sidewalk, which meant that pedestrians had to walk on the street, which we found to be an unsafe condition. We used that State ordinance to work with that vendor to relocate. We wanted to add the authority that the State has to prohibit vending when it is unsafe and give the County that same authority to be able to control that. That is the background of how this developed, trying to use existing law and existing ordinances, but modifying them to be clear about when they are relevant and when they are used.

Committee Chair Kagawa: Questions, Councilmembers?  
Councilmember Yukimura. The question/answer portion can help to give us a little more clarity. I have some questions too as well.

Councilmember Yukimura: In the law, a provision that is being...excuse me, it is in the Bill...the provision that is being proposed to be added talks about a hundred dollar (\$100) application fee and that would apply to vendors themselves?

Mr. Steinmetz: Okay, so there is a difference between the Peddlers and Concessionaires Bill and the Revocable Permit Bill. In the Peddlers and Concessionaires Bill that applies to parks, every vendor has to get a permit. The way we set up the Revocable Permit Bill is, for these events, there would be an event organizer who would apply for the permit. For example, the Kapa'a Business Association has been organizing the Kapa'a First Saturday Art Walk, so they would be the applicant, pay that application fee, and then all the vendors would then work with the event organizer. That is something else we wanted to do. We did not want the County to have to work with every single vendor in one of these events and have them all have to get this type of permit. That is the key difference between the two (2) ordinances.

Councilmember Yukimura: Okay. That makes sense because in order to coordinate everything, there should be one (1) entity. The one hundred dollar (\$100) fee that is being added here is really for the coordinator of the event to pay.

Mr. Steinmetz: Correct. That is an application fee. That is the fee that we are requesting to apply for the permit.

Councilmember Yukimura: That would theoretically cover the cost of processing.

Mr. Steinmetz: Exactly. It would cover the costs of processing. Separate from that, there are conditions that could be put on the revocable permit. For example, the First Saturday Art Walk in Kapa'a hires security guards, they need to get portable restrooms, the same thing with Hanapēpē Friday Night Festival & Art Walk. All of those things would be conditions of the permit that would be borne by the applicant and not by the County. We are not trying to cover all of those things with the one hundred dollar (\$100) application fee; that is strictly an application/processing fee.

Councilmember Yukimura: Thank you. I appreciate that.

Councilmember Chock: I have a follow-up.

Committee Chair Kagawa: Councilmember Chock.

Councilmember Chock: Mr. Steinmetz, thank you for responding to my E-mail on some of these questions. The question I have is about the nominal fee of one hundred dollars (\$100). I am guessing that our Police Department had to respond and attend some of these events in the past because of people walking on the

street or maybe disputes between private owners and the sidewalk and so forth. I know you are trying to get it under control with one (1) organization, but there are unforeseen costs that are not being looked at and I am just wondering if that one hundred dollar (\$100) fee is enough. Part of what we are looking at with the budget needs is to trying to really quantify how it is we are spending our time. For instance, our Police Department spends their time on specific things and this would create more need, in my mind. I just want to say that when we look at fees, are we taking into consideration those things like additional people or police response.

Mr. Steinmetz: Yes, I think there are different types of fees that we should be thinking of. There is the application fee, which is strictly the cost of applying for the permit. Then what you are referring to are really costs of the event that may or may not be borne by the County. I would suggest that those types of fees be considered as part of the conditions of the permit. Again, an example with the First Saturday Art Walk in Kapa'a is that there were concerns about security, so at certain times there was a request that the Business Association hire off-duty police officers to provide a higher level of security at that event. That could potentially be a condition. I would suggest that not be part of the processing fee because it is really going to vary on the event, but that could certainly be considered as part of the conditions. Another thing I want to mention is what we are really trying to do is put the responsibility of the organization and the management of the event on the event organizer. Some of the problems that have happened in the past are that some vendors might show up who have not signed up in advance and start fighting with each other about a space that they want. It is very difficult for an event organizer to handle that if there has not been some kind of registration process or some way to understand who was actually going to be organized in which space. This permit process would require them to have a site plan. A condition would probably be that vendors would need to sign up in advance and have some sort of certificate so people know that they are a registered/approved vendor at this particular event. The idea is that some of those problems and issues can be handled by the event organizer instead of by the Kaua'i Police Department (KPD). KPD then becomes kind of the next stage of defense, if needed. If there is really some kind of problem that the event organizer cannot handle, then KPD could perhaps step in, but again, we can never guarantee the KPD is going to be able to come because it is going to be totally dependent on what other things are happening at that time. That is another example of where we are trying to shift that responsibility of enforcement to the applicant.

Councilmember Chock: I appreciate that. KPD is one (1) instance, but there is more impact on our parks and restrooms that are around the area as well. If we are going to move into creating avenues for these events, there are impacts that we need to take into consideration, that do affect our current infrastructure and services. If that is something that can be done separately, that is fine.

Mr. Steinmetz:

Yes.

Committee Chair Kagawa: Councilmember Yukimura, did you have more? Mr. Steinmetz, especially in Hanapēpē Friday Night Festival & Art Walk, because I was born and raised there, but it is very successful and I am wondering what is the main problem that we are trying to correct and how does this Bill improve that situation? Right now, it is highly attended, a lot of visitors go there, and one could say that it is already successful without having this Bill. What is the intended purpose and what are we trying to correct? Did we copy another island that has similar language that has worked this way where they rely on certain organizations to run and manage it?

Mr. Steinmetz: That is a great question. Yes, I would agree with you that these events have been incredibly successful, and in some ways this Bill has arisen out of "these events being the victim of their own success." There are folks here who helped to organize Hanapēpē Friday Night Festival & Art Walk, so they can speak better to the history than me, but some of these groups have come to us requesting help because they are having difficulty being able to enforce their event. For example, Hanapēpē Friday Night Festival & Art Walk really started with a few businesses, especially art galleries who wanted to highlight their shops and really were not planning on having a lot of public vending. They wanted to open their shops, let people come in, and what happened through that process is people started coming and vendors saw, "Wow, here is a group and we would like to set up," but that was not really the initial intent. As vendors came, it became difficult for the Hanapēpē Economic Alliance, in this case, to actually manage all of that. Hanapēpē is also unique in that the difference between the public right-of-way and the private property is very confusing. Some of the sidewalks and parking spaces are actually on private property and some are public property. I also want to mention that this Bill is only for public property that is under the jurisdiction of the County. It does not affect vending on private property or does not try to manage that at all. But what happened is because there was quite a bit of confusion and concern, the County got called out quite a few times to help try and manage the event. The County spent time trying to figure out what is private and public property and push people on to private property, and the Office of Economic Development (OED) can actually speak to this as well, the amount of time and effort that was spent to try and manage this and try to help with it. Another issue in Hanapēpē is there had been different feelings about what actually should this event be and should they have vending and how much vending should they have. By going through this process of applying for a permit, first, the event organizer really needs to work with the community to really define what should this event be. Then when there is vending, do a site plan that indicates where, on public property, it is okay to have vending, which the County agrees to because we feel it would be safe. This gives both the County and the event organizer a blueprint to work with and to then, if other vendors just start showing up, to be able to say, "Hey, I am sorry, you cannot set up here. You do not have a permit for that." Those are some of the things that we are trying to address that were not working well under the current system of it just kind of being spontaneous how these events happen.



Committee Chair Kagawa: I have a question relating to the history of these events. Before vending was occurring, does OED have numbers as to how much estimated people were attending Hanapēpē Friday Night Festival & Art Walk and then after the vendors have come in and established part of it, how much people attend now? Is this Bill trying to do a balance of cutting down the vendors a little bit and go back to how it was with some vendors and what would be the impact there? Does OED have those types of numbers or projections as to the affects or is the vending even adding to the crowd? I am just wondering if OED has the numbers, prior and current, to support the needing of this Bill and the needing to try and control vending? Like I said, when I go down there on a Friday night, it is packed, unlike ever before. I realize that when it is packed, it does not mean it is running well or chaotic for the organizers, but I am just wondering if we have those types of numbers because I think we should take our time and have some rationale of why we are making drastic decisions. That way it is easier to support.

Mr. Steinmetz: I am sorry, I do not have numbers.

Committee Chair Kagawa: Does OED have numbers?

Mr. Steinmetz: I just wanted to stress that the County is not trying to dictate what the event should be. We are really asking the community and the event organizers to decide what kind of event they want, and then we want to support by making sure it is safe and that it works okay. We are not recommending a reduction in vendors or an increase in vendors. We just want to make sure that whatever the vision is of the community for what the event that they want, that we can make it easier for that to happen and we can make sure that it is safe. We are not trying to tell a community what type of event they should have.

Committee Chair Kagawa: Councilmember Chock.

Councilmember Chock: I appreciate that we are moving in the direction of allowing the community to move it. I think the issue that is coming up is when the community is not clear or they are varying discrepancies on what that should be. So I guess for us, as the mediator, is to determine, "Look, this is what we have to make sure is clear before you come and apply for this permit or you cannot get it." I have not seen...maybe there is a little bit of clarification on how that happens on our part, so that we are not stuck between varying perspectives of what this is supposed to be.

LYLE TABATA, Acting County Engineer: Lyle Tabata, Acting County Engineer. Can we do a short recess? I would like to clarify...

Committee Chair Kagawa: Sure. How long do you need?

Mr. Tabata: A couple minutes.

Committee Chair Kagawa: I want the Administration to finish and then we will have a public testimony. You folks have to leave? Lyle, you folks meet, and we will have these members from the public speak at this time. No recess. Again, there is no urgency because no decision is going to be made today. All we are doing today is educating the public, ourselves, and the Administration as far as what more we need going forward because I will make sure that we take our time and do it right before we pass it. I have been getting some complaints. I do not like to pass bills when we have complaints and what I feel like we can work towards a happy medium.

JOANNA CAROLAN, Treasurer, Hanapēpē Economic Alliance (HEA):

Thank you for allowing me to speak. I really appreciate that you are taking...oh, Joanna Carolan, Hanapēpē Economic Alliance and Banana Patch Studio. I really appreciate that you are taking your time to look at this carefully. I think that the importance of this Bill is right now there is no one in charge of Hanapēpē Friday Night Festival & Art Walk. That potentially is a big liability for the County and for everyone participating in it that there is no organization that is taking responsibility for it. When a vendor calls and says, "Hey, this is a great event, I would like to set up, what do I do?" The only thing we can tell them is that, "There is no vending allowed on County property. If you want to participate, you have to work out something with a private property owner." Sometimes they do that. Sometimes they think, "Well, here is a spot on the street, I am going to set up here because nobody is telling me that I cannot." Just in response to Councilmember Chock's concerns, I would say the impact now on and the potential costs to police and asking for county services to help manage is much more significant now than it would be with some sort of governing body and control of the event. In this letter, what we have tried to do is outline the problems that we have had over many years that we have been working on this, from the County's perspective; what are your liabilities and concerns, which we totally understand; what are the business owners concerns; what are the property owner's concerns; and what are the vendors who are participating concerns? From our perspective, what we have tried to do is look at how this ordinance would actually address those concerns. In terms of the language, I really appreciate that you folks are looking at that. I certainly do not like going to Bali where you have vendors coming up to you on the beach, and on Kaua'i it is really nice to be able to go someplace as a tourist and not be accosted by vendors. So, I agree to allow vending wherever. Some of this, I would say the ordinance comes out of an event that really was organized during difficult, economic times, after the hurricane, but it has turned into something that, as you said, residents and visitors really look forward to and really like. But without any control of it, it is really...I just think that we are very fortunate that nothing has happened to-date that could be a liability and cause someone to sue any of the business owners or the County because there is no one in control down there. It is kind of like the "Wild West" of anything goes and without any authority, that is just going to continue and people will just set up wherever. I think my time is up. Thank you.

Committee Chair Kagawa: I want to thank you for this handout that you gave. I read the E-mail earlier and it is clear that it is a good response and very clear as far as why you folks are trying to do what you are doing. I appreciate that. Do you have to leave as well? Did you want to speak?

JUDITH PAGE, President, HEA: I am Judy Page, Hanapēpē Economic Alliance and Little Fish Coffee. I do not really have a lot to say except when your questions came up, the one question that we have always had a problem with is we have no authority. We cannot go out to people on the street and say, "No, you cannot set up there." We cannot even say that to our fellow business owners, "You really cannot block all of those County parking places." We cannot do any of that. There is no authority and there is no way to try and not have it just be a "free-for-all" and I think that is our concern. We want a certain tone, we want it to be enjoyable for locals as well as visitors, and we want to enjoy it as merchants as well, as well as be successful. I think we are looking to have a certain ambience and a sense of "it is proper and safe," to bring your children there as well. Thank you very much.

Committee Chair Kagawa: Can you restate what business you are from?

Ms. Page: Little Fish Coffee.

Committee Chair Kagawa: Is that in Hanapēpē Town?

Ms. Page: In Hanapēpē Town, yes.

Committee Chair Kagawa: Thank you, Judy. Go ahead.

ANGELA HEADLEY: I am Angela Headley and I am from Island Art Gallery in Hanapēpē. I have been there for fifteen (15) years and I live right behind my gallery, so twenty-four-seven (24/7), I have seen it all changed. It started very slow and now it has become, as you see now, so incredibly busy. As Lee has said, we are almost a victim of our own success. Many things grow that way and then they just need more governing. We never wanted it to be like that, but it has been that way. I agree everything that Joanna and Judy have said about our intentions, which are to pull back a little bit and get back to family, local, and historical. We have put a lot of time into the history of the town and having plaques around town, but you cannot even see them anymore because it is so crowded. It does feel way overcrowded on a Friday night. There is no easy available parking because it is taken up by too many vendors. It is a matter of being a certain size and you can only hold so much as far as people, cars, noise, and everything—no matter where it is or what it is and we have just gone beyond that and we have no control on saying, "This is not a safe place. This is a narrow corner." We just need to get some kind of rules. If we fine people, we will follow. If there are good, safe rules that make sense, people in general want to follow rules, but it is a bit of a "free-for-all" at this point. Thank you.

KIM HEADLEY, Secretary, HEA: I am Kim Headley and with Angela, own Island Art Gallery and live behind the gallery. What I was going to say was just to point out one (1) example without having any authority to manage the event, we end up in a situation like I had just a few weeks ago. After purchasing the iconic truck that sits there in the parking lot, which the County helped us to put in the town, with the bougainvillea hanging out the back. We had a couple come and set up on the truck itself and people like to take pictures with their families and what have you with the truck as the background. I went across the street to ask them to please...if they would, I was very nice about it, take their goods off of the truck and move a little bit out of the County parking space there, which had a wheelchair access, which they were blocking. The only reaction I got was, "Who are you? What authority do you have?" I replied, "I have no authority. I am just asking if you could..." He actually followed me back...I said, "Okay," I turned around went back to the shop, he followed me into the shop and started yelling to the fifteen (15) to twenty (20) people that were in the shop already, "This man is not nice. Do not buy anything from him." I was in the office, not even in the gallery, I had to come back out, and ask him to leave and he would not at first, so we finally called the police. The police showed up forty-five (45) minutes later and all they could do was talk to him. They did not know what was County property, what was not County property. The man stayed the rest of the night and three (3) more weeks, and we had no control over that. This would solve that kind of issue. We are not asking for drastic changes, it is just to take a better control over what is happening. Thank you very much.

Committee Chair Kagawa: Thank you. Anybody else need to leave urgently, or else we will have Mr. Steinmetz come back to answer a few more questions. Lee? Lee, Council Chair Rapozo has a question for you, followed by Councilmember Kaneshiro, and Councilmember Chock.

Council Chair Rapozo: Thank you. Mr. Steinmetz, do we have a map right now delineating what is private and what is County?

Mr. Steinmetz: We do now, yes.

Council Chair Rapozo: Is the police informed or were they provided a copy of that map?

Mr. Steinmetz: I can check on that. I am not sure if they have a copy of that.

Council Chair Rapozo: Right now without this Bill, in the case that was just described where someone was on County property, is it required to have a vending permit today. Do you have to register with the County if you are going to sell something on the street?

LYLE TABATA, Acting County Engineer: Lyle Tabata, Acting County Engineer. We do not have anything right now and that is why we are putting this together.

Council Chair Rapozo: Those folks that sell the fish and smoked meat, the peddlers, I guess, and concessionaire, is that not what they are?

Mr. Tabata: There is a State Hawai'i Revised Statutes (HRS) that they have to be out of the right-of-way and they can sell. I have to get that HRS. Jodi, I need your help. There is a State law that allows the sale of fish and flowers.

Council Chair Rapozo: But that is on State Highways, right?

JODI A. HIGUCHI SAYEGUSA, Deputy County Attorney: Yes, there is...

Council Chair Rapozo: If you are on private property, you do not need a peddlers license for private property, right? What is our existing ordinance today?

Ms. Higuchi Sayegusa: There is HRS 264-101, but that is limited to State Highways preventing vending from that, but recently there was an amendment that allowed now vending with permit, but that is State. There was a little bit of ambiguity with the language in the Peddlers and Concessionaires Ordinance because there is adjacent to streets, I think it is...I will pull up the amendment...and we are trying to adjust that with our amendment because there is a little bit of an ambiguity...

Council Chair Rapozo: Let me just ask...

Ms. Higuchi Sayegusa: But that was meant to govern within parks.

Council Chair Rapozo: Not the highways?

Ms. Higuchi Sayegusa: Not the highways.

Council Chair Rapozo: So right now, I can go to any parking stall and set up a shop?

Ms. Higuchi Sayegusa: That is part of the problem that we are trying to address.

Council Chair Rapozo: That ordinance that we passed a while back would not cover that?

Ms. Higuchi Sayegusa: As of now, that is what we are trying to clarify and create some sort of system. We are trying to delineate...peddlers and concessionaires just limited to vending within parks and so this would govern on rights-of-way, not nearby parks or not adjacent to parks, but for example on Rice Street, Hanapēpē, and there is also in Po'ipū, alongside our County road between Lāwa'i Beach Park and the beach.

Council Chair Rapozo: So if it is not adjacent to a park with the current ordinance there is nothing required?

Ms. Higuchi Sayegusa: Yes, there is nothing right now. We have tried to limit commercial activities. If they are using it as any other motorists, for instance unloading or loading, but I guess the concern is just the safety aspect of it. If there is a way to help control things in terms of traffic control or if they are creating hazards under our traffic code that is already there, then that would provide a means for keeping KPD regulation or help or County oversight. It has always been a struggle to address the commercial activities with the code that we have, which is addressing stopping on a roadway, like traffic concerns.

Council Chair Rapozo: Like taking a County's parking stall, as discussed earlier.

Ms. Higuchi Sayegusa: Right.

Council Chair Rapozo: Right now, there is no ordinance that can enforce that?

Ms. Higuchi Sayegusa: No.

Mr. Tabata: If it becomes a safety issue, then we can site for safety violations.

Council Chair Rapozo: Right, but aside from that, if they just pulled up in front of any one of those shops in Hanapēpē Town that the County owns the parking lot. Right now, I can roll in there, open up my trunk, and sell *lei* right out of that and it would be legal?

Ms. Higuchi Sayegusa: Previously, we have governed that through the Peddlers and Concessionaires Ordinance.

Council Chair Rapozo: I guess I am trying to figure out if we need this Bill. That is all I am asking. The existing ordinance involving peddlers and concessionaires do not apply to a stall in front of a private business, but the stall is County.

Mr. Steinmetz: If maybe, I could add to that. If there is some other violation like let us say there is timed parking and it is 2-hour parking or whatever, which we have in very few places. But if someone were to be in that spot longer than that, that could be a violation...

Council Chair Rapozo: I am talking about the act of vending, not parking violations. I understand that much. I am talking about, right now, I could drive up to Hanapēpē with my pickup truck, park in front of their shop, and sell *leis*. I could do that right now without a permit?

Ms. Higuchi Sayegusa: Yes.

Mr. Steinmetz: If it does not create a hazardous condition, yes. The other code that exist now is Section 18-1, which allows the Council through resolution to prohibit vending on specific roadways, but that is where in order for it to be prohibited, the Council has to take action and actually prohibited by resolution.

Council Chair Rapozo: But this Bill would cover all?

Mr. Tabata: Yes.

Council Chair Rapozo: Any County right-of-way?

Mr. Tabata: Correct.

Council Chair Rapozo: Not just Hanapēpē and Kapa'a.

Mr. Steinmetz: Yes.

Council Chair Rapozo: It could be anywhere. It could be on any street and I would assume if I wanted to sell something out of my truck, I would come to the County, apply for a permit, and you would give me a permit to sell something on the street.

Ms. Higuchi Sayegusa: This would be on just County owned properties.

Council Chair Rapozo: Correct, any County right-of-way.

Ms. Higuchi Sayegusa: Yes.

Mr. Tabata: Just to step back to your original question, three (3) years ago, when we had a County surveyor, we surveyed Hanapēpē Town and marked private versus public, and Hanapēpē varies between the public right-of-way and the public...the lines are not straight. It is very confusing, so we identified

where it was, but we have never gone back in hoping that we would complete this work. It is very mixed. The variations of where the property lines are very blurred.

Council Chair Rapozo: I can imagine. Thank you.

Committee Chair Kagawa: Councilmember Kaneshiro.

Councilmember Kaneshiro: This is probably for Mr. Steinmetz. We have been receiving some E-mails on concerns relating to this Bill, but I think there is some confusion between the actual Bill and the permit that you need to fill out with the Bill. We have been getting questions like "We do not see any insurance requirement in the Bill," but the Bill we have allows the person to fill out this permit, which then specifies more information. Could you provide a little more information on the permit side? Hopefully that might clear up some of the questions that we have been getting regarding the actual Bill because the actual Bill allows us to start regulating it, but the permit is what specifies who can get it and what they do. Can you say something towards that?

Mr. Steinmetz: Thank you. Something that I just distributed is a draft application form that we are looking at that, that would be what the applicants would actually fill out. It is of course tied to the language in the Bill. I think we can also put that up on the screen, if you want. The first page is basically general information about the applicant, but it also ask the applicant to provide a site plan of how they plan to use the public space. Is it possible to enlarge that picture? They were just Word documents that were sent over. There you go.

Committee Chair Kagawa: I was just going to say that this is not going to be the last time we discuss this, so if we do not get to every knot and bolt, we do not have to, but if you could discuss it in the nutshell.

Mr. Steinmetz: The first page of this, the applicant does need to tell us why they want to do this, what the purpose of it is, and provide a site plan so that we understand what this is. I just want to mention, too, if there is a road closure involved, KPD then becomes a co-signatory of the permit so that we make sure that everybody is okay with the closure. If you go to the next page, question 10, are questions from the way the Ordinance is written and this is something that we did not change in the Ordinance. This was already the way the Ordinance was written, but these are questions that the applicant has to answer and tell us if they are in conflicts with this use with other possible uses. Going back to Councilmember Chock's question about how do we make sure we get input from everybody and if this truly reflects the community's vision, for large events such as the Hanapēpē Friday Night Festival & Art Walk or the First Saturday Art Walk in Kapa'a, there is going to have to be a discussion amongst the community about what this event is, in order to answer these questions. So it is kind of like a self-facilitation of using these questions to help define what the event is and what it wants to be. I just wanted to



point that out. It also states...on question 11, it states that there are insurance requirements associated with this. It also shows that various departments that this could potentially be routed to, depending on the event, to make sure that all the various County departments are onboard and understand what is going on. You are right, any other conditions would actually be in the permit itself and those would be based on the event and whatever needs are required to make it safe, make sure it is cleaned up, and make sure all those issues you have mentioned are addressed.

Committee Chair Kagawa: I have a follow-up question. Where did you get this sheet from? Did you get this from another County? I love it when we model someplace where they already have a process that is successful.

Mr. Steinmetz: We basically looked at the Ordinance and based on the question...we did not take this application from another place. Based on the problems, issues, and things we were hearing, we developed this questionnaire to be directly related to the language in the Ordinance.

Committee Chair Kagawa: Is there no other County in the State that has a lot of events, such as these, like Kona or Maui, and they have a process that is successful that we could model? Does it require us to be the first and making it up? I am curious.

Mr. Steinmetz: I do not have an answer. I am not sure if Jodi has an answer. I would like to say that we were not starting from scratch. We were using ordinances that were already on the books and try and clarify how they are used and which ones are appropriate for which situation.

Committee Chair Kagawa: Okay. Go ahead, Councilmember Kaneshiro, you still have the floor.

Councilmember Kaneshiro: This is the permit application and as far as going along the lines of Committee Chair Kagawa, the actual permit, I am sure it looks different. It has more requirements in it and if you folks are following another County that has a similar permit like this would be helpful, I guess, just as my input. I think there was a lot of confusion between the Ordinance and the actual permit and what it requires. The Ordinance basically gives you the avenue to do this permit application and actual permit to do the events.

Mr. Steinmetz: We actually have a simple permit and we would be happy to provide that to you. Again, this is not something new. For example, for Lights on Rice Street when the museum sets up, they are vending in the County parking lot; that is done by a revocable permit. We do have the experience and examples of permits from that and we would be happy to share that at the next meeting.

Committee Chair Kagawa: Council Chair Rapozo, you have a follow-up?

Council Chair Rapozo: I have a follow-up. For the Lights on Rice Street, what ordinance are you currently using to enforce that revocable permit?

Mr. Steinmetz: It is the existing Revocable Permit Ordinance that is used. This Bill amends the existing ordinance.

Council Chair Rapozo: Right.

Mr. Steinmetz: It does not create a new ordinance.

Council Chair Rapozo: I understand. So what is the difference between that one you just talked about and maybe one for either Kapa'a or Hanapēpē?

Mr. Steinmetz: Basically...

Council Chair Rapozo: Because it is not adjacent to a park—it is a parking lot.

Mr. Steinmetz: It is making clear that the right-of-way of the street itself falls under the Revocable Permit Ordinance as opposed to...both are properties of the County, but it was not really clear about the right-of-way aspect.

Council Chair Rapozo: My question is what makes the museum require a permit to vend in the County parking lot and you are saying I can go out to Hanapēpē, in any parking stall that I want, and vend out of my truck, as long as there is no safety violations. What is the difference between the two? You told me earlier that I needed...the original ordinance is "parks." That parking lot of the museum is not a park nor is it adjacent to a park, it is County parking lot, but you are saying that one requires a permit, but out in Hanapēpē, we do not.

Ms. Higuchi Sayegusa: When we looked at the current Ordinance, it seemed to...it was not so clear that it was meant to or intended to govern commercial activities, but in any case, that is how it has been handled all these years for Lights on Rice Street and those vendors by the museum. My understanding is that process has been run through this revocable permit process, but when we look at this in the now trying to deal with any other commercial activities in other areas that happens just within the right-of-way versus our parking lot, which is firmly our property and something that would require bidding to use our piece of real property for use. I guess that is partly why we are proposing the amendment, to help carve out and clarify a process that could be applied not only to a parking lot, but also portions of our right-of-way.

Council Chair Rapozo: Okay. I am confused. We are doing it right now and I do not see the difference between the museum parking lot, or the County's parking lot, and Hanapēpē or Kapa'a rights-of-way. The parking lot is the County's right-of-way.

Ms. Higuchi Sayegusa: Chapter 20, Article 5 of the Revocable Permit Process talks about bidding for use of our properties and that the intended use does not conflict with...

Council Chair Rapozo: I guess all I am asking for...

Ms. Higuchi Sayegusa: And it is also asking for rent.

Council Chair Rapozo: No, but what is the difference between the revocable permit that we give to the museum, as Mr. Steinmetz just talked about, because there is not a bidding process. They do not bid for that. They put in a revocable permit and we give them the permit. There is no charge. I am just trying to figure out if this is even necessary. If we already have an existing law that provides for the revocable permit, like you just explained we do for the Lights on Rice Street, I do not understand why we have to create a whole new law. I guess that is where I am at and what you just described for the Lights on Rice Street, to me, is exactly what Hanapēpē and Kapa'a are asking for. It is the same thing. The person wants to vend on the right-of-way, they come in and apply for a revocable permit like the museum does, you review it, you grant it, and they can vend. That is where I am having a problem with understanding the process.

Mr. Steinmetz: I think it is important to state that we are not trying to create a new law. I would call this more "a clean-up" of an existing ordinance so that it is really clear to everybody when you use which permit. That has been confusing before. This makes it really clear that the peddlers and concessionaires permit is for parks and there is a floor amendment to add roads adjacent to parks because it just functions that way and that the Revocable Permit Ordinance is for County rights-of-way and properties like the Lights on Rice Street situation in the parking lot. I think the problem has been just confusion by both the public and County of which ordinance will be applied and when. So really what we are trying to do is clean up these ordinances so that it is really clear, and in addition to that, add the State language about prohibiting vending when it is unsafe and creates a hazardous condition that the State already has in their law that we have used, but to add it to our County Code so that it is clear that the County has the authority and there are not any questions. We are trying to clarify how these various ordinances are used and clean up the language within the ordinance.

Council Chair Rapozo: Okay. I am still confused, but I guess it is what it is.

Councilmember Chock: Mr. Steinmetz, when this application is filled out and approved and a person, business, or group comes in after-the-fact and says, "The event is not living up to the community's interest," and they have a complaint about it, what recourse is there? Who makes the decision on whether or not this permit is then relooked at or taken away?

Mr. Steinmetz: Ultimately, this is a revocable permit which gives the County the authority to revoke the permit. If someone were to protest and say, "This is not working, there are these issues," I think what we would first want to do is work with the event organizer to see if we can work out whatever the difficulties are and possibly amend the permit, but the County does have the authority to revoke the permit if need be. It is hard to figure out every single scenario of when that would happen, but it is set up to be revocable for that reason.

Councilmember Chock: Okay. So your office would take care of that?

Mr. Steinmetz: The County Engineer.

Councilmember Chock: I know you are kind of in between.

Mr. Steinmetz: Yes, along with the Director of Finance.

Councilmember Chock: Okay. Thank you.

Committee Chair Kagawa: Councilmember Yukimura.

Councilmember Yukimura: In the case of non-event time, if a vendor wants to vend in that space that during event time is controlled by the event organizer, will they have to get permits also and they would not go to the event organizer in that case, right?

Mr. Steinmetz: Basically, if someone wanted to use a County right-of-way for regular vending all the time, they could apply for a permit. When you look at the questions and the ordinance itself assuming that this is. Again, it would depend on the situation, but if this were a parking space that was in front of a brick and mortar building and someone just wanted to sign up or get a permit to vend there all the time and if the brick and mortar business was supported of that, then that could probably be worked out. If not, then I do not think that permit would probably be approved. Also, the ordinance sets up when there needs to be public bidding for a space. So if it was a for-profit business that wanted to use that space, it would probably be difficult to do that without going through a public bidding process to make it fair for everybody.

Councilmember Yukimura: Thank you.

Committee Chair Kagawa: Thank you. I think we are done with questions. I feel like I am educated a little more on this. We will open it up for public testimony. Lonnie? Again, the intention is that we are going to defer this item and let the Administration further work on this and meet with some of the business owners that have raised some concerns. Hopefully, we can come to a happy medium at some point. Thank you.

Mr. Sykos: For the record, Lonnie Sykos. It is no mystery why you all are so confused about all of this. This is an economic development activity and who is here testifying on behalf of the Office of Economic Development, but a person trained in transportation? I am having a real disconnect here. How come the Office of Economic Development is not down here talking about an economic development project, and instead we have the Transportation Agency. It makes no sense. This Bill is so grossly flawed, Section 3.18-1.2(a) violates freedom of speech. There is no sound ordinance in this County, there is no noise ordinance, and yet you pick one (1) activity to ban. If you pass this ordinance and drive down the street with your windows down and your car stereo playing, you are in violation of this ordinance. This is stupid. This is a huge waste of our tax money. This whole process is a joke. It is incompetency. Section (c), likewise, violates freedom of speech. You are going to make all of the churches that go down on Easter and have Easter ceremonies at the beach get a permit? Any political meeting is banned without getting permits? I do not think so. These are Constitutional issues. The language itself is at odds with the stated intent. They just came up here and testified that the State does not allow vending on State property if it creates a safety problem; otherwise you can. They just came up here and this ordinance wants to ban all peddling on all County property. That is not what they just told us. They told us, "No, only for safety." Well, what they wrote bans all peddling. I have a peddlers license and I think it is utterly absurd for this County to make it difficult for people to vend. That is anti-economic development. That is anti-small business. That is anti-start-up. You are making it harder for people to go into business. This is misguided. Also, the Charter says that when you folks pass ordinances and all that, it is supposed to address a single issue. The problem in this is that you are trying to address about ten (10) issues at one time. This needs to go back and be completely reworked.

Committee Chair Kagawa: Thank you, Lonnie.

Mr. Sykos: Thank you.

Committee Chair Kagawa: Further speakers? Anybody else wishing to speak on this? Second time?

Ms. Headley: Angela Headley, Island Art Gallery. In defense of George Costa, the Director of Economic Development, I spent about six (6) years with him and had about three (3) inches of paperwork on everything he has tried to help us with in Hanapēpē regarding all of this. He has really gone out of his

way. He has even marked the streets and marked every in and out property we have, which is really something that the Roads Division has done also, but he has done it too. There has been a lot of time put behind this. It is not something that people just suddenly say that they want to be in charge. This is something that we are just trying to get a handle on safety there and pleasure for everybody. Mr. Costa also gave us a piece of paper that we could hand out to people to try and let them know you should not be in an unsafe parking space and that said there was an ordinance that there was no vending on County property parking spaces. I was under the impression that there was an ordinance or maybe I just misunderstood what I just heard. There was also an ordinance that you could not block sidewalks because pedestrians are required by law to use sidewalks and our event has turned into a total street event and that is what makes a lot of us concerned about the safety. That is why we are just trying to calm it down a bit. Thank you.

Committee Chair Kagawa: Further speakers? Seeing none. I am going to ask that we defer for a month until the July 27, 2016 Committee Meeting. Do we have discussion before we make the motion? Go ahead.

There being no further testimony, the meeting was called back to order and proceeded as follows:

Council Chair Rapozo: Not that I am against the amendment. I just want to make sure it is something that is necessary. This ordinance or the amendment is not just for Hanapēpē and Kapaʻa, and I do not know how this County is going to differentiate between an application from someone that is going to do an event or wants to vend at an event in Hanapēpē or Kapaʻa or the normal "Mel Rapozo" wants to set up shop on a County right-of-way. I fill out this application: "Does the intended use conflict with a use for immediate public purpose?" No. "Is there a reasonable alternative to the use of the requested public property?" No. "Does the proposed use create a nuisance or unreasonably affect public health or welfare?" I am going to just put no. I mean, I cannot see the difference, is what I am saying. I do not know how the County is going to differentiate between the events that are successful and I believe need to be...there needs to be some regulation and control and "Joe Public," who wants to set up a booth selling lemonade on a County right-of-way. How is the County going to say no to you, but yes, to you because you are part of an organized event? This ordinance or this Bill does not differentiate. It is island/Countywide. If we are trying to fix the events that are existing, then we should specify that is what we are doing. This is where the unintended consequences come in because "Joe Public" is going to apply for a permit and someone is going to get denied because someone in the community is not going to be happy with it, and then you end up with a lawsuit because, "You let them, but you do not let me." Again, if we are trying to fix something that needs to be fixed, let us fix it. I do not think it is a problem to specify what we are trying to do here. If it is to fix the Hanapēpē Friday Night Festival & Art Walk or the First Saturday Art Walk in Kapaʻa, then let us deal with that if that is the issue. But again, this is like using the sledgehammer to kill

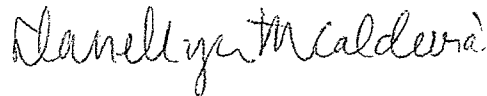
an ant. You have to remember that it will affect every single person, every single County right-of-way. That is why I asked the question. Is it something we really need to do or are we going to identify these specific areas and focus on fixing? That is all I am suggesting. We can have that discussion at a later time. Thank you.

Committee Chair Kagawa: Thank you. With that, anybody else? If not, can I have a motion?

Councilmember Kaneshiro moved to defer Bill No. 2628 to July 27, 2016, seconded by Councilmember Chock, and carried by a 4:0:1 (*Councilmember Kualii was excused*).

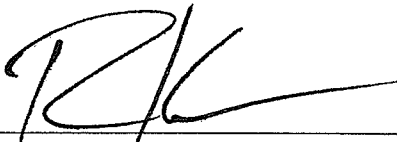
There being no further business, the meeting was adjourned at 12:18 p.m.

Respectfully submitted,



Darrellyne M. Caldeira  
Council Services Assistant II

APPROVED at the Committee Meeting held on July 27, 2016:



ROSS KAGAWA  
Chair, PWPR Committee

(June 29, 2016)

FLOOR AMENDMENT

Bill No. 2628, Relating to Revocable Permits in County Rights-of-Way

Introduced By: MASON K. CHOCK (By Request)

Amend Bill No. 2628 by amending Proposed Article 5 to read as follows:

**"Article 5. Vending from County Rights-of-Way Prohibited**

**Sec. 18-5.1 Vending from County Rights-of-Way Prohibited.**

(a) No person shall park or place a vehicle or structure wholly or partly on any County right-of-way for the purpose of selling the vehicle or structure or of selling therefrom or therein any article, service, or thing, thereby creating a hazardous condition or a public nuisance or in reckless disregard of the risk of creating a hazardous condition or public nuisance. The Department of Public Works may remove or require the immediate removal of the vehicle or structure from the right-of-way.

(b) The County Engineer, in the case of County rights-of-way, may, upon application in writing, approve a revocable permit pursuant to Chapter 20, Article 5 of this code, subject to any terms and mitigation conditions imposed by the County Engineer or his designee, authorizing the applicant to vend in the right-of-way. If the revocable permit application includes temporary road closures, approval of the revocable permit by the Chief of Police is also required.

(c) For the purposes of this section, "right-of-way" means the entire width from property line to property line, including the berm, swale or shoulder of a roadway owned and/or under the jurisdiction of the County of [Kaua'i.] Kaua'i, except those roadways under the jurisdiction of the Department of Parks and Recreation pursuant to Chapter 23, Article 3, Kaua'i County Code 1987, as amended.

(New material is underscored. All material is new.)

V:\AMENDMENTS\2016\06-29-2016 Bill No. 2628 Revocable Permits County ROW AMK\_cy.doc